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Attorneys for Lucent Technologies Inc.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

	X	
	:	
In re:	:	Chapter 11 Cases
	:	
ADELPHIA COMMUNICATIONS	:	Case No. 02-41729 (REG)
CORPORATION, et al,	:	
	:	(Jointly Administered)
Debtors.	:	
-----	X	

**RESPONSE OF LUCENT TECHNOLOGIES INC. TO  
DEBTORS' FIRST OMNIBUS OBJECTION TO  
THE ALLOWANCE OF CERTAIN CLAIMS**

Lucent Technologies Inc. ("Lucent"), by and through its attorneys, McCarter & English, LLP, responding to the Notice of Debtors' First Omnibus Objection to the Allowance of Certain Claims (the "Objection"), says:

In the Objection, Adelphia Communications Corporation ("ACC") and the other Debtors and Debtors-in-Possession in the above-captioned cases (collectively the "Debtors") seek, inter alia, to expunge the claim of Lucent on the grounds that the Lucent claim is either an Unsubstantiated Claim or Nonexistent Claim, as those terms are defined in Paragraph 9 of the Objection.

### AMOUNT OF LUCENT'S CLAIM

1. A copy of Lucent's Proof of Claim is attached hereto as Exhibit 1. Although the amount of the claim set forth on the Proof of Claim form is \$44,721,519.78, paragraph 12 of the claim lists certain credits for monies received by Lucent upon the sale of its collateral to third parties, and a credit in the amount of \$1,942,820.74 in connection with Lucent's repurchase of certain Lucent products from Devon Mobile Communications, L.P. ("Devon" or the "Partnership"). Devon is the subject of a Chapter 11 proceeding pending in the United States Bankruptcy Court for the District of Delaware (the "Devon Proceeding"). Subsequent to the filing of Lucent's Proof of Claim in the Devon Proceeding, Devon sold certain assets to Buffalo-Lake Erie Wireless Co., LLC pursuant to a Purchase and Sale Agreement approved by Order of the Court dated November 17, 2003 (the "BLEW Order"), a copy of which (without attached exhibit) is annexed as Exhibit 2. Pursuant to Paragraph 6 of the BLEW Order, the amount to be credited against the Allowed Lucent Claim (as defined in the Revised Stipulation and Order attached to Exhibit I as Exhibit J) was reduced from \$1,942,820.74 to \$1,252,377.65. Pursuant to Paragraph R of the BLEW Order, Lucent was paid the sum of \$901,875.00 on account of the sale of certain of its equipment to Buffalo-Lake Erie Wireless in which Lucent had a first priority security interest.

2. As a result of the foregoing, Lucent has a claim against the Debtors in the amount of \$42,104,128.13, calculated as follows:

\$44,721,519.78	Total
- 1,252,377.65	Credit for repurchase of own equipment
- 901,875.00	Proceeds from sale to BLEW
- 288,797.00	Proceeds from sale to U. S. Cellular

- 174,342.00

Proceeds from sale to Cellco

\$42,104,128.13

### **FACTUAL BACKGROUND**

3. Lucent has conducted business with ACC and certain of its affiliates since at least as early as 1997. In or about April of that year, American Telephone and Telegraph Company ("AT&T") entered into a General Agreement (the "GA") with Hyperion Telecommunications, Inc., the predecessor of Adelphia Business Solutions, Inc. ("ABS") to provide Hyperion with various products and licensed materials. The GA was thereafter amended from time to time, and the rights and obligations of AT&T thereunder were subsequently transferred to Lucent. Pursuant to the GA, Lucent provided ABS with millions of dollars of products and licensed materials. ABS was a subsidiary of ACC until ACC affected a spin-off of ABS from ACC on January 11, 2002. ABS filed a Chapter 11 proceeding in 2002. Lucent's claim against ABS was settled in that proceeding.

4. On or about November 3, 1995, Devon G.P., Inc. a Delaware corporation, entered into an Agreement of Limited Partnership with ACC, a Delaware corporation, to create Devon Mobile Communications, L.P., a Delaware limited partnership ("Devon" or "the Partnership"). In October, 2000, Lucent entered into the General Agreement for Personal Communications Service Systems, etc. with Devon, attached to Exhibit 1 as Exhibit A (the "Purchase Agreement").

5. Following the execution of the Purchase Agreement, Lucent received hundreds of purchase orders to deliver products and licensed materials to various locations where Devon operated its business (the "Devon Sites"). The vast majority, if not all, of these purchase orders were on a form indicating the identity of the entity issuing the purchase order as "Adelphia".

6. At all times, Lucent looked to "Adelphia" for payment of its invoices ("Devon Invoices") for product and licensed materials delivered to Devon Sites. Indeed, ACC requested that Lucent forward all Devon Invoices to Adelphia Communications Corp., 1 North Main Street, Coudersport, PA 16915. See Exhibit 3 attached hereto.

7. Upon information and belief, none of the Devon Invoices were paid by Devon. To the extent that the Devon Invoices were paid, Lucent received payment from ACC or from one of ACC's affiliates at the direction of ACC.

8. In light of its course of business with Lucent, ACC should be held liable for all unpaid Devon Invoices pursuant to the doctrines of implied contract, quasi contract and quantum meruit.

9. From the inception of the Partnership, ACC was Devon's sole source of operating capital, and caused Devon to be undercapitalized to conduct the business for which it was formed. All monies necessary to operate Devon's business and pay Devon's creditors were provided by ACC.

10. Devon operated merely as a front for ACC, and ACC so controlled Devon's business as to make it inequitable for ACC not to pay the debts it caused Devon to incur to Lucent. Because Devon was operated as the alter ego or mere instrumentality of ACC, ACC is liable to Lucent for the entire amount of all unpaid Devon Invoices.

11. Because of the manner in which it caused the Partnership to be created and operated, ACC should be deemed to have acted in the capacity of a general partner of Devon, and should therefore be liable for the Partnership's debts to Lucent.

12. Lucent reserves the right to assert such additional arguments in support of its claim

as may arise as discovery proceeds in this contested matter.

Respectfully submitted,  
McCARTER & ENGLISH, LLP  
Attorneys for Lucent Technologies Inc.

Dated: December 10, 2004

By: David J. Adler  
**DAVID J. ADLER**

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